UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

DAMIEN DENNIS,
Plaintiff,
Vs.
Order

TOM STUBBS, et al.,

Defendants.

On November 15, 2011, the Magistrate Judge filed two Reports and Recommendations (##40, 41). In the first Report and Recommendation (#40), the Magistrate Judge recommends that Plaintiff's Motion for Judgment by Default against Defendant Minnix (#34) and Plaintiff's Motion for Summary Judgment for Default (#39) be denied without prejudice because it would be inconsistent to enter judgment and assign damages for the deliberate indifference claim before a determination is made on the merits of the excessive force issue. No objections were timely filed to the Report and Recommendation (#40). The Report and Recommendation (#40) is well-taken, and is therefore APPROVED AND ADOPTED. Plaintiff's Motion for Default Judgment (#34) and Motion for Summary Judgment for Default (#39) are DENIED without prejudice.

In the second Report and Recommendation (#41), the Magistrate Judge recommends that Defendants' Motion to Dismiss (#24) should be denied because the evidence demonstrates that Plaintiff complied with the grievance procedures and thereby exhausted his

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1 administrative remedies. The Magistrate Judge found that the Nevada 2 Department of Corrections Administrative Regulation 740 ("AR 740") 3 does not specifically require inclusion of the informal level 4 grievance to the first level grievance. Defendants filed an $5 \parallel$ objection (#42) to the Report and Recommendation (#41), arguing that 6 while AR 740 does not specify that an inmate must attach his 7 informal level grievance to the first level grievance, the form 8 provided for a first level grievance includes language stating that 9 the inmate has attached the original copy of his grievance and all 10 supporting documentation. We agree with the Magistrate Judge that 11 Plaintiff's case should not be dismissed for failure to attach the 12 informal level grievance when AR 740 does not expressly require that 13 information.

The Report and Recommendation (#41) also recommends that 15 Defendants' Motion to Strike (#29) be denied. While Plaintiff filed 16 a response (#28) to Defendants' reply brief (#27) in support of 17 their Motion to Dismiss (#24), Plaintiff did so because Defendants $18 \parallel$ filed additional documents and a declaration related to Defendants' $19 \parallel \text{Motion to Dismiss (#24)}$ in their reply brief (#27) which had not 20 | been filed with Defendants' moving papers (#24).

The Report and Recommendation (#41) is well-taken, and is 22 therefore **APPROVED AND ADOPTED**. Defendants' Motion to Dismiss (#24) 23 and Motion to Strike (#29) are **DENIED**.

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DATED: January 3, 2012.

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